

## **Four**

### **Historical Commission and Councilor M. Bardsley**

## **Chapter 28**

Provide for demolition review of historic buildings and structures

## **Chapter 28**

### **Demolition Review Ordinance**

#### **Section 28-1. Purpose**

This Ordinance is enacted for the purpose of protecting and preserving significant buildings and structures in the City of Northampton that constitute or reflect distinctive features of the architectural, cultural, economic, political, and/ or social history of the City and to encourage preservation of these resources by identifying alternatives to demolition through communication and collaboration.

To achieve these purposes, the Northampton Historical Commission is authorized to advise the City of Northampton's Building Commissioner with respect to building permit applications that propose activity that would result in total demolition of buildings or structures regulated by this Ordinance.

#### **Section 28-2. Definitions**

Applicant: Any person or entity that files an application for a Building Permit that proposes total demolition of a building or structure. If the applicant is not the owner of the premises upon which the building is situated, the owner must assent in writing to the filing.

Application: A Building Permit application that proposes total demolition of a building or structure.

Building: Any combination of materials forming a shelter for persons, animals or property.

Building Commissioner: The person occupying the office of Building Commissioner or otherwise authorized to issue Building Permits.

Calendar Day: A day which could include a legal municipal holiday, Saturday or Sunday. Notice, posting and review periods will be based on calendar days, as opposed to business days.

Commission: The Northampton Historical Commission or its designee.

Demolition: For the purposes of this Ordinance, demolition is defined as any act of pulling down, destroying, removing, dismantling or razing a building or structure that results in total demolition of said building or structure.

Demolition Permit: The Building Permit issued by the Building Commissioner or his/her designee as required by the State Building Code for total demolition of a building, or structure.

Preferably Preserved: Any significant building or structure that the Commission, following a public hearing, determines to be in the public interest to be preserved rather than demolished. A preferably preserved building or structure is subject to the twelve month demolition review period.

Significant Building or Structure: Any building or structure within the City which is a regulated building or structure and which has been determined by the Commission or its designee to be significant based on any of the following criteria:

- The building or structure is listed on, or is within an area listed on, the National Register of Historic Places; or
- The building or structure has been found eligible by the National Park Service or the Massachusetts Historical Commission for the National Register of Historic Places; and/ or the Mass. State Register of Historic Places, or has an application pending; or
- The building or structure is importantly associated with one or more historic persons or events, or with the broad architectural, cultural, political, economic or social history of the City, or the Commonwealth; or
- The building or structure is historically or architecturally important, in terms of period, style, method of building construction or association with a recognized architect or builder, either by itself or in the context of a group of buildings.

Structure: Any building or bridge.

### **Section 28-3. Buildings and Structures Regulated by this Ordinance**

A building or structure built in 1939 or earlier, determined to be historically significant and preferably preserved by the Northampton Historical Commission. Such regulated buildings or structures will be defined by age for properties built in 1900 and earlier, and determined by inventory listing for those built between 1901 and 1939. The Northampton Historical Commission will create the inventory within a two- year period from the date of the adoption of this Ordinance. The Historical Commission shall make a report to the City Council every 6 (six) months after the date of the adoption of this Ordinance for the 2 (two) year period, to report on the progress. All reviews will be conducted based on a construction date of 1939 or earlier during the time that the inventory is being developed. After the initial age and inventory based threshold determination, the Commission will institute the public hearing process to ascertain if the historically significant and preferably preserved criteria apply. At that time the determination will be made whether or not to activate a review period.

The age of the building and/or structure shall first be determined by consulting the City's Form B Historic Inventory or, if Form B's are not available the Assessor's records or any other documentation which the Building Commissioner determines to be adequate. If the building and/or structure is of unknown age and might be a regulated building or structure it shall be assumed to be a regulated building or structure for the purposes of this Ordinance. Notwithstanding any language to the contrary, this Ordinance ONLY regulates building permits that propose total demolition.

Buildings or structures located within Local Historic Districts are subject to the provisions of

Massachusetts General Laws Chapter 40C. Applications for demolition in such districts will be reviewed by the pertinent Local Historic District Commission. Applications for demolition within the Central Business Architecture District will be reviewed by the Central Business Architecture Committee (created by City Ordinance adopted October 7, 1999). If any of the above mentioned should cease to exist, the Northampton Historical Commission would administer this Ordinance in those areas. The Historical Commission will review applications in all other areas of the City.

#### **Section 28-4. Exemptions**

1. Any and all buildings and/or structures on any land for which a Special Permit, Comprehensive Permit or Building Permit has been issued prior to the adoption date of this Ordinance but only if those projects proceed before the previously issued permits expire.
2. Any buildings on the grounds that were once part of the former Northampton State Hospital.

#### **Section 28-5. Procedure**

No Building Permit for demolition of a regulated building and/or structure shall be issued without following the provisions of this Ordinance, except for projects approved under the permit granting authority of any local historic district (adopted under Mass. General Laws Chapter 40C) or the Central Business Architecture District.

##### Submission Requirements

In addition to the information required for the Building Permit application, a project proposing total demolition of a regulated building or structure shall include the following information:

- Address of the building/structure to be demolished
  - Owner's name, address and telephone number
  - Description of the building
  - Description of the proposed work
  - Reason for requesting a permit for demolition
  - Brief description of the proposed reuse, reconstruction or replacement
  - Photographs of the building(s)/structure(s).
1. Application: The Building Commissioner shall forward a copy of each complete Building Permit application that proposes total demolition for any regulated buildings and/or structures identified in the previous section to the Commission, or its designee, within 7 (seven) days after the filing of such application. No Building Permit for demolition shall be issued at that time. The Building Commissioner shall notify the applicant that the application activates the provisions in this Ordinance.
  2. Determination of Significance: The Commission shall within 15 (fifteen) days after the receipt of such application from the Building Commissioner, make a written determination of whether the building and/or structure is significant.
    - a. Negative Determination: Upon determination by the Commission, or its designee, that the building and/or structure is not significant, the Commission shall so notify the Building Commissioner and applicant in writing. The Building Commissioner may then issue the Building Permit for demolition.

- b. Positive Determination: Upon determination by the Commission, or its Designee, that the building and/or structure is significant, the Commission shall so notify the Building Commissioner and applicant in writing. No Building Permit for demolition may be issued at this time. If the determination is made that the building and/or structure is significant, the Commission shall hold a public hearing within 30 (thirty) days of the written notification to the Building Commissioner.
  - c. If the Commission does not notify the Building Commissioner within 15 (fifteen) days of receipt of the application, the Building Commission may proceed to issue the Building Permit for demolition.
  - d. The decision as to whether the building and/or structure is significant may be made at an advertised public meeting of the entire Commission, by a sub-committee of the Commission designated at a public meeting, or by a designee of the Commission, duly authorized at a public meeting.
3. Public Hearing: Determination of Preferably Preserved Status
- a. Public notice of time, place and purpose of the hearing shall be posted in a conspicuous place in City Hall for a period of not less than 7 (seven) days prior to the date of said hearing, and the applicant and the Building Commissioner shall be notified in writing of the meeting time and place.
  - b. Evidence to be gathered in order to render this determination could include the following.
    - 1. What is the current condition of the building or structure?
    - 2. How intact is the building or structure?
    - 3. What is the age of the building or structure?
    - 4. Is the building or structure an exemplary representation of a certain style or period and if so, how many of those exist?
    - 5. What is the building or structures role in the streetscape?
    - 6. Are there exemplary construction elements that embody distinctive characteristics of a period?
    - 7. Does the building or structure yield information important to history?
    - 8. Has the building or structure been designed by a famous and/or local architect?
    - 9. Has the building or structure been removed from its original location? If so, does it still have architectural value, or is the surviving structure importantly associated with an historic person or event?

All information gathered through this investigative process and any other information that may be brought forth at the public hearings may be considered in making the determination.

- c. At the public hearing, or within 14 (fourteen) days after the public hearing, a determination shall be made as to whether or not the building and/or structure should be preferably preserved. If agreed to in writing by the applicant, the determination of the Commission may be postponed or extended.
- d. Negative Determination: If the Commission determines that the building and/or structure is not preferably preserved, the Commission shall so notify the Building

Commissioner and the applicant in writing. The Building Commissioner may then issue a Building Permit for demolition.

- e. **Positive Determination:** If the Commission determines that the building and/or structure is preferably preserved, the Commission shall notify the Building Commissioner and the applicant in writing. When a Positive Determination has been issued then:
  - i. No Building Permit for demolition may then be issued for a period of up to 12 (twelve) months from the date of the original Building Permit application, unless otherwise agreed to by the Commission.
  - ii. The Building Commissioner may issue a Building Permit for demolition for a preferably preserved building or structure within this 12 (twelve) month period if both 1 and 2 are met;
    - 1. The Commission notifies the Building Commissioner in writing that the Commission finds even with the issuance of the Building Permit for demolition that the intent and purpose of this Ordinance is served; or, in the judgment of the Commission, there is no feasible option for preservation, or when the Commission finds there is a clear and compelling economic benefit to the City which is greater than the benefits of preserving the structure; and
    - 2. All plans for future use and development of the site have been filed with the Building Commissioner and have been found to comply with all laws pertaining to the issuance of a Building Permit or Zoning permit, including without limitation any necessary zoning findings, variances or special permits, must be granted and all appeals from the granting of such approvals must be concluded prior to the issuance of a Building Permit for demolition under this section to ensure the planned reuse is feasible prior to demolition.
  - iii. Following the 12 (twelve) month delay period, the Building Commissioner shall issue the Building Permit for demolition, provided that all plans for the use of the site after demolition have been found to comply with applicable laws and all permits and approvals for the development have been obtained and appeal periods concluded. If the property owner plans to keep the lot vacant, no such approvals are required.
- f. If the Commission does not so notify the Building Commissioner in writing within 21 (twenty-one) days after the public hearing, the Building Commissioner may issue the Building Permit for demolition.

## **Section 28-6. Administration**

- 1. With the adoption of this Ordinance, Section 2-336 of the City's Code of Ordinances specifying how appointments are made to the Northampton Historical Commission has been amended. The amendment states that as terms of current members expire, the Mayor will appoint a representative from the Chamber of Commerce, followed by an architect, followed

by a representative from the real estate or construction industry. (See Section 2-336 adopted April 19, 1973 for more detail).

2. The Commission may adopt such rules and regulations as are necessary to administer the terms of this Ordinance. The Office of Planning and Development is authorized to adopt a schedule of reasonable fees to cover the costs associated with the administration of this Ordinance.
3. The Commission may delegate authority to make initial determinations of significance to one or more members of the Commission or to a municipal employee.
4. The Commission shall create an inventory of significant buildings and structures built during the period of 1901 to 1939 that will be subject to this Ordinance within a two-year period from the date of the Ordinance adoption. The Commission may also pro-actively develop other lists of significant buildings or structures that may be subject to this Ordinance. Buildings or structures proposed for the significant list of buildings and/or structures shall be added only following a public hearing.

### **Section 28-7. Emergency Demolition**

If, after an inspection, the Building Commissioner or the Board of Health finds that a building or structure subject to this Ordinance is found to pose an immediate threat to public health or safety, or the health and safety of the occupants due to its deteriorated or damaged condition, and that there is no reasonable alternative to the immediate demolition of the building or structure, then the Building Commissioner may issue an emergency Building Permit for demolition to the owner of the building after making every reasonable effort to notify the Commission (preferably within 48 hours) of making this determination. The Building Commissioner or the Board of Health shall then prepare a report explaining the condition of the building and the basis for the decision that shall be forwarded to the Commission.

The Building Commissioner shall require the property owner of the building and/or structure to be demolished to provide photographs and other documentation about the property as outlined in the Procedure section of this Ordinance. Or, the Building Commissioner shall make every reasonable effort to provide the Commission reasonable time to document such building and/or structure prior to demolition, provided such activity poses no threat to public health or safety, or appropriate precautions are taken to protect public health and safety.

### **Section 28-8. Enforcement and Penalties**

1. **Authorized Agents:** The Director of Planning and Development or his/her designee is specifically authorized to institute any and all actions and proceedings, in law or equity, as they may deem necessary and appropriate to obtain compliance with the requirements of this Ordinance.
2. **Civil Penalties:** Civil penalties may be imposed if a building and/or structure's owner or agent has willfully contributed to its deterioration during the demolition review period. Any owner of a building and/or structure subject to this Ordinance who demolishes a building and/or structure willfully or damages a portion of a building or structure in a way which increases its likelihood of total failure without first obtaining a Building Permit for

demolition in accordance with the provisions of this Ordinance, shall be subject to a civil fine of not more than \$300.00 (three hundred dollars). Each day the violation exists shall constitute a separate offense until the demolished building is re-created as directed by the Commission, or unless otherwise agreed to by the Commission. Notwithstanding the above, this ordinance does not create an affirmative obligation to maintain a property.

3. **Building Construction Delay:** If a building and/or structure subject to this Ordinance is demolished without first obtaining a Building Permit for demolition, no Building Permit shall be issued for a period of 2 (two) years from the date of the demolition on the subject parcel of land unless otherwise agreed to by the Commission.
4. **Relationship to Other Requirements:** Nothing in this Ordinance shall be deemed to exempt applicants from any requirements of the State Building Code or other local ordinances and other rules and regulations.
5. **Non-Criminal Disposition:** In the alternative to civil prosecution, the City may utilize the non-criminal disposition procedure set forth in MGL Chapter 40, section 21D, in accordance with City Ordinance Section 25-5.

#### **Section 28-9. Historic District Act**

Following a determination that a building and/or structure is significant and preferably preserved, the Commission may recommend that a building and/or structure be protected through the provisions of the Mass. General Law, Chapter 40C, the Historic Districts Act. The steps required under M.G.L. 40C shall be followed prior to the establishment of a local historic district. Nothing in this Ordinance shall be deemed to conflict with the provisions of the Historic District Act, Massachusetts General Laws Chapter 40C. If any of the provisions of this Ordinance do so conflict, that Act shall prevail.

#### **Section 28-10. Severability**

In case any section, paragraph or part of this Ordinance be for any reason declared invalid or unconstitutional by any court, every other section, paragraph and part shall continue in full force and effect.

#### **Section 28-11. Effective Dates and Ordinance Review**

This Ordinance shall take effect upon adoption by the City Council and shall be reviewed after a period of five years from the adoption date. This review will evaluate the way the Ordinance has worked and provide an opportunity to make any revisions or adjustments that may be required. The Historical Commission will make a presentation to the City Council articulating the number of applications that came before them, whether or not the delay period was activated, the time period of the delay before either a resolution was reached or a demolition permit was issued and any recommendations the Commission may have about the process.